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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/552,027	10/03/2005	Theodorus Suibertus Anthonius Rolf	P/1336-199	6889
2352 7590 05/19/2011 OSTROLENK FABER GERB & SOFFEN 1180 AVENUE OF THE AMERICAS NEW YORK, NY 100368403				
EXAMINER				
KLAYMAN, AMIR ARIE				
ART UNIT		PAPER NUMBER		
3711				
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05/19/2011		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary**Application No.**

10/552,027

Applicant(s)ROLF, THEODORUS SUIBERTUS
ANTHONIUS**Examiner**

AMIR KLAYMAN

Art Unit

3711

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 April 2011.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 17-35 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 17-35 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. Since applicant did not amend most of the claims (only depended claim 26 was amended) and thus the scope of his claimed invention stayed the same as before, the examiner incorporates herein the rejections from the previous office action mailed on 1/14/2011. Hereinafter the examiner will discuss amended claim 26 and applicant's arguments.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

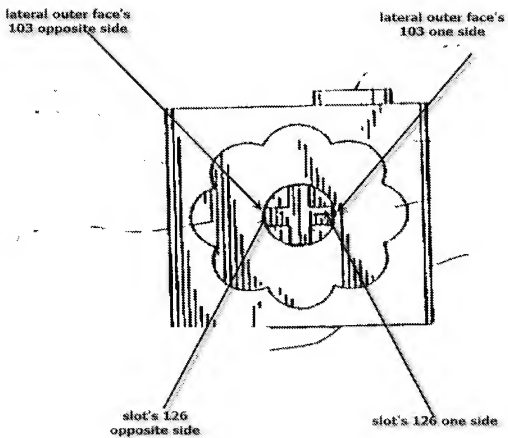
3. Claims 17-20, 22 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cyrus et al US 6,129,605.
4. Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cyrus et al US 6,129,605 as applied to claim 17 above, and further in view of Bretting US 3,487,579, Fischer DE 3503211, and Orgass et al US 4,582,495.
5. Claims 23 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cyrus et al US 6,129,605 as applied to claim 17 above, and further in view of Simmons US 6,088,987.

6. Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cyrus et al US 6,129,605 as applied to claim 17 above, and further in view of Glynn US 5,725,411.

As cited in the previous office action (which is incorporate herein), Cyrus does not disclose at lest one slots penetrating a lateral outer face for holding edges of construction devices. Glynn was added to show a block (100) having lateral outer face (103) with at least one penetrating slot (construed as recessed connection means (126)) configured to hold edge of construction beam (105) as best seen in figs 6a-6h and discussed in column 4, line 50 to column 5, line 42 (see the examiner rational to modified Cyrus with the teaching of Glynn as discussed in section 4, pages 10-11, in the previous office action). With respect to the added limitations "...at least one slot penetrating the lateral outer face from one side of the lateral outer face to an opposite side....", the examiner will marked Glynn's block to show that slot (126) is penetrating lateral outer face (103) from one side of the lateral outer face (construed as the right side of slot (126) positioned on the right side of outer face (103)) to an opposite side (construed as the left side of slot (126) positioned on the left side of outer face (103)).

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Examiner's markings



7. Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cyrus et al US 6,129,605 as applied to claim 17 above, and further in view of Garpow US 6,506,091.
8. Claims 28 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cyrus et al US 6,129,605 and Simmons US 6,088,987 as applied to claim 23 above, and further in view of Lindenmeyer US 2,609,638.
9. Claim 30 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cyrus et al US 6,129,605, Simmons US 6,088,987, and Lindenmeyer US 2,609,638 as applied to claim 29 above, and further in view of Garpow US 6,506,091.
10. Claim 31 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cyrus et al US 6,129,605, Simmons US 6,088,987, and Lindenmeyer US 2,609,638 as applied to claim 28 above, and further in view of Deahr US 5,498,188.
11. Claims 32 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cyrus et al US 6,129,605 and Simmons US 6,088,987 as applied to claim 23 above, and further in view of Garpow US 6,506,091.
12. Claims 34 and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cyrus et al US 6,129,605, Simmons US 6,088,987, and Lindenmeyer US 2,609,638 as applied to claim 28 above, and further in view of Garpow US 6,506,091.

Response to Arguments

13. Applicant's arguments filed 4/13/2011 have been fully considered but they are not persuasive.

14. With regard to applicant's arguments that there is no portion of Cyrus's block that discloses to lie within the recesses of stud of an inserted block, thus there cannot be either three lands, nor can such lands comprise a majority of the contact zone, examiner respectfully disagrees. Applicant based these conclusions by stating that the bottom **18** of one block receives studs **20** of another therein, being held only at the crests of the studs by sidewalls **14**. As cited in the previous office action Cyrus (column 7, line 59 to column 8, line 16 (see especially column 8, lines 7+, wherein the bottom **18** of column **12** (i.e. of a toy building block) preferably has plurality of female fittings IN THE SAME CONFIGURATION AND ORIENTATION AS THE MALE fittings **20** (i.e. at least one stud on a top surface of a block thereon). Cyrus Teaches that identical female fittings of one block are holding the studs of another block and not sidewalls **14** as assert by applicant. Thus, Cyrus's block has a recess that shaped such that at least one stud **20** inserted in one of the recess is guided by at least three zones of contact.

15. With regard to the stud's height being at least 30% of the block height. As discussed in the previous office action, the examiner rely on a previous court ruling (in *In re Aller*) that discovering an optimum or workable ranges by routine experimentation is not inventive step. It is understood that Cyrus's stud **20** has a height to it (applicant assert that by visual approximation at most the stud is 10% of the block height) and more important, one of ordinary skill in the art would have recognized that Cyrus's

stud's height is such a sufficient height in order to maintain a steady/ stable/firm connection/assembly while being inserted within a recess of another block. In other words, one of ordinary skill in the art **would have not form** Cyrus's stud's height to create a fragile/ unstable building block assembly while a stud of one block is inserted within a recess of another block. The stud is fitting within a recess in a tight/ firm manner. Applicant never provided any evidence that at least 30% of the block height is "the golden number" for the stud height that is needed in order to maintain a steady/ stable/firm connection. If taking in consideration that Cyrus's stud indeed has a height of 10% of the block's height as assert by applicant, it appears that 10% of a block's height will be enough in order to form a steady/ stable/firm building block capable of being stacked.

16. With respect to applicant's arguments that the teachings of Bretting, Fischer, and Orgass have structure that may be construed as a "stud" does not speak the unworkability of such studs when combined with the base reference Cyrus (applicants' remarks page 9, paragraph 4), examiner notes that it has been held that the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

One of ordinary skill in the art would have recognized that using rotational symmetry of a stud is 6-fold, 8-fold, or 12-fold, is well known in the art (as taught by

Bretting, Fischer, and Orgass) and will be obvious to incorporate within Cyrus especially when Cyrus suggesting that stud **20** and complementary female fittings may be of any shape that provides removable attachment of two components (Cyrus column 8, lines 13+).

17. With regard to applicant's arguments that Simmons does not disclose all the features of his invention (i.e. a full size model) within the miniature LEGO model, examiner respectfully disagrees. Applicant concluded that within the invention of Simmons the LEGO model would have not included rods, holes, and caps since the connection between blocks done by friction without the need of holes, caps, and/or threaded rods. Examiner maintains his positions and states that within Simmons's invention his miniature LEGO included **all the features of the full size** as explicitly taught by Simmons (column 6, lines 15+). Regardless if Simmons's miniature LEGO assembly has all the features of his full size, the fact is that Simmons teaches a building block that has pass-through hole, rods, holes, and caps as claimed and therefore the combination of Cyrus and Simmons renders applicant's claimed invention as obvious.

If applicant then will argue that Simmons and Cyrus are nonanalogous art, thus Cyrus teaches a toy building block while Simmons teaches a building block, the examiner notes that (a) the recitation of applicant's structure to be a toy building block is in the preamble, and a preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535

F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951); and **(b)** it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, the references deal with building block structures.

18. With regard to applicant's arguments that the reference to Garpow does not disclose the limitations of claim 27, i.e. a block comprising a bivalent block having top and bottom recesses, examiner respectfully disagrees. Examiner acknowledged the telephonic interview on 11/15/2010, wherein the examiner stated that amending the claim would overcome the prior art. However, after reviewing the claim limitations once again, it appears that in fact Garpow's structure render applicant's claimed invention (emphasis added). It is very important to note that although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). In the previous office action (which is incorporate herein) the examiner provided a full explanation regarding his interpretation to Garpow's structure. To applicant convenience the examiner will repeat his comments regarding Garpow's structure having all the features as claimed.

With respect to claim 27, Cyrus discloses at least one stud comprises a piece having the plurality of circumferentially arranged, substantially equally spaced teeth with

rounded crests and interspersed rounded grooves (as discussed above, construed as male fitting (20)) and the piece is configured to be inserted in the at least one recess (in column 8, lines 5-17, wherein the male fitting (20) (i.e. a stud with plurality of teeth having rounded grooves and crests as seen in fig 5) is to be insert within a complementary/ harmonizing /matching recess (i.e. a female fitting in bottom (18)).

Cyrus is silent, wherein the block comprises a bivalent building block having at least one of the recesses on the top surface and the bottom surface. Also, Cyrus is silent regarding the stud being double a length of the recess.

In the field of toy building blocks, Garpow teaches a block (10) comprises a bivalent block having at least one recesses on the top surface (construed as a recess's/aperture's (47) from the block's top surface to the middle of it) and the bottom surfaces (construed as a recess's/aperture's (47) from the block's middle surface to the bottom surface, i.e. the opposite surface from the top surface). The examiner construed Garpow's recess/aperture as having a bottom and top recess according to applicant's disclosure, in particularly in reference to applicant's fig 8. What applicant refers to top and bottom recess (6) are merely top and bottom of a hollow aperture the pass through the block. It would have been obvious at the time the invention was made to one of ordinary skill in the art to form Cyrus's block comprising a bivalent building block having at least one of the recesses on the top surface and the bottom surface as taught by Garpow for the reason that a skilled artisan would have been motivated by Garpow's explicit suggestion to form a building block to be easily utilized by children in column 2, lines 13-15. A skilled artisan would have been motivated to form Cyrus's building block

as being easily utilized by children (as taught by Garpow), especially when Cyrus teaches a toy building block.

With respect to the stud being double length of the recess, as discussed above with respect to claim 17, the examiner notes that it has been held that claims which fall within the broad scope of the references are unpatentable there over because, among other reasons, there is no evidence of the criticality of the claimed ranges of weight or proportions; see *In re Hoeschele*, 406 F.2d 1403, 160 USPQ 809 (CCPA 1969).

Applicant needs to provide evidence (emphasis) that while forming his invention, the block's stud must be double the length of the block's recess, is critical and essential. The main question to ask is what distinguishes a stud that is double the length of the recess than a stud that is little less than double or little more than double in length comparing to the length of the recess?

19. In regard to applicant's argument that there is no reasons, teachings, or suggestions to combine Cyrus with, Lindenmeyer, Deahr, and/or Garpow (or any other cited reference for that matter) with respect to the rejections of claims 28-35, the examiner notes that KSR forecloses the argument that a specific teaching, suggestion, or motivation is required to support a finding of obviousness. See the recent Board decision *Ex parte Smith*, --USPQ2d--, slip op. at 20, (Bd. Pat. App. & Interf. June 25, 2007).

Conclusion

20. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to AMIR KLAYMAN whose telephone number is (571)270-7131. The examiner can normally be reached on Mo. - Fr. (7:30AM-5:00PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eugene KIM can be reached on (571) 272-4463. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/AK/
/Gene Kim/
Supervisory Patent Examiner, Art Unit 3711

5/17/11